

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MM Docket No. 92-253

**ORIGINAL
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NOV 27 1992

FCC - MAIL ROOM

In re Applications of

BAKCOR BROADCASTING, INC., Debtor
c/o DENNIS ELAM, TRUSTEE

File No. BRH-900330VV

For Renewal of License of
Station KLIK(FM), Lubbock, Texas

SOUTHWEST EDUCATIONAL MEDIA
FOUNDATION OF TEXAS, INC.

File No. BPED-900629MK

For Construction Permit for a new FM
Station on Channel 229C1, Lubbock, TX

RECEIVED

NOV 27 1992

To: Administrative Law Judge Walter C. Miller

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MOTION TO ENLARGE ISSUES

Law Offices
JAMES L. OYSTER
Rt. 1, Box 203A
Castleton, VA 22716

Counsel for Southwest Educational
Media Foundation of Texas, Inc.

No. of Copies rec'd 5+6
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SUMMARY

This is a motion to enlarge issues. The motion demonstrates that the Bankruptcy Trustee who is the renewal applicant here misled the Commission in filing a proposed settlement agreement which he never intended to honor. In doing so he has engaged in misrepresentation to the Commission.

The Trustee has also used his office to obtain sexual favors from station employees and has also evidenced racial discrimination. The issues should be enlarged to explore these matters and whether the renewal applicant here is qualified to be a Commission licensee.

MOTION TO ENLARGE THE ISSUES

Southwest Educational Media Foundation of Texas, Inc. ("SEMFOT"), by its counsel, herewith moves to enlarge the issues against Backor Broadcasting, Inc., Debtor, c/o Dennis Elam, Trustee ("Elam") in the above-captioned proceeding. In support whereof, the following is stated:

Trustee Lacks the Character Qualifications to be a Commission Licensee

1. This pleading is being filed within thirty (30) days of the release of the Hearing Designation Order ("HDO") in this proceeding. Therefore, it is timely filed.

2. As will be demonstrated herein, the Trustee's dealings with SEMFOT and the Commission demonstrate that he does not possess the requisite character qualifications to be a Commission licensee. In California Broadcasting Corporation, 2 FCC Rcd. 4175, the Review Board set forth the following analysis:

6. The Commission's Basic Character Standard:

Honesty and Candor. As the Commission has expressly emphasized from the dawn of its inception:

[I]f the Commission is to carry out its function of granting and denying applications for licenses, it must obtain true and accurate information from those who seek to operate radio stations and must take disciplinary action against those who make false representations to the Commission. Navarro Broadcasting Ass'n., 8 FCC 198, 199 (1940). See also FCC v. WOKO, Inc., 329 U.S. 223 (1946). The bedrock requirement for absolute truth and candor from a Commission licensee or from a licensee applicant is, simply stated, this agency's quintessential regulatory demand.

In practical terms, this means that "proceedings before the Commission are not private law suits," and that the Commission does not function "as an umpire blandly calling balls and strikes for adversaries

appearing before it." See Scenic Hudson Preservation Conference v. FPC, 354 F.2d 608, 620 (2d Cir. 1965), cert. denied, 384 U.S. 941 (1966). The FCC has an affirmative obligation to license more than 10,000 radio and television stations in the public interest...

* * *

As a result, the Commission must rely heavily on the completeness and accuracy of the submissions made to it, and its applicants in turn have an affirmative duty to inform the Commission of the facts it needs in order to fulfill its statutory mandate. This duty of candor is basic, and well known. See, e.g., Sea Island Broadcasting Corp. v. FCC, 627 F.2d 240, 243 (D.C. Cir.) cert. denied, 449 U.S. 834 (1980); Golden Broadcasting Systems, Inc., 68 F.C.C.2d at 1101-4. RKO General, Inc. v. FCC, 670 F.2d 215, 232 (D.C. Cir. 1981) (emphasis added), cert. denied, 456 U.S. 927, 457 U.S. 1119 (1982). That "basic and well known" duty of complete and unalloyed candor from a broadcast applicant is both timeless and immutable. Thus, "the Commission [has] observed that 'our scheme of regulation rests on the assumption that applicants will supply [the Commission] with accurate information'" and that "[d]ishonest practices threaten the integrity of the licensing process" Policy Regarding Character Qualifications In Broadcast Licensing, 102 FCC 2d 1179, 1210 (1986) (subsequent history omitted). The Commission's 1986 Character Policy statement went on to repeat:

As we have stated, the trait of "truthfulness" is one of the two key elements of character necessary to operate a broadcast station in the public interest. The Commission is authorized to treat even the most insignificant misrepresentation as disqualifying. Id. (footnote omitted). And, again:

[T]he scope of the Commission's character inquiry will now focus on those aspects of an applicant's character that relate to its proclivity for truthfulness in dealing with the Commission and its propensity for complying with our rules and policies.

* * *

In this regard, the propensity for an applicant to be truthful and reliable is related to its basic qualifications to be a licensee. Id., at 1231. Material misrepresentations to the Commission or an intentional lack of candor with respect to matters affecting an applicant's basic eligibility status are two species of misconduct that thoroughly disqualify applicants for the "public trust" embodied in a Commission license. RKO General, Inc. v. FCC, supra; WHW Enterprises, Inc.

v. FCC, 753 F.2d 1132 (D.C. Cir. 1985); Sea Island Broadcasting Corp. of S.C. v. FCC, 627 F.2d 240 (D.C. Cir. 1980); Chaconas v. FCC, 486 F.2d 1314 (D.C. Cir. 1973); WOKO, Inc. v. FCC, supra. Where an applicant has knowingly attempted to mislead the Commission on an underlying matter of decisional import, the Board has consistently and completely disqualified such an untrustworthy applicant. See, e.g., Catoctin Broadcasting Corp. of New York, 2 FCC Rcd 2126, 2136-2138 (Rev. Bd. 1987); TeleSTAR, Inc., supra; Mid-Ohio Communications, Inc., 104 FCC 2d 572 (Rev. Bd. 1986); Bellingham Television Associates, Ltd., 103 FCC 2d 222 (Rev. Bd. 1986); Old Time Religion Hour, Inc., 95 FCC 2d 713 (Rev. Bd. 1983), review denied, 57 RR 2d 1147 (Comm'n 1985).

Elam Has Engaged in a Lack of Candor
in His Dealings with the Commission

3. The facts giving rise to the instant request for a character issue are as follows. On July 12, 1991, the above-captioned parties filed with the Commission a JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT, calling for dismissal of the Elam renewal application for KKIK(FM) (and grant of SEMFOT's competing application) and assignment of KXRQ(AM), Lubbock, TX to SEMFOT for a total consideration of \$250,000.00. Subsequently, on September 6, 1991, Williams Broadcasting Group ("Williams") filed an OPPOSITION TO JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT. As a consequence of that filing the parties knew that it would be impossible to obtain approval of the joint request in a short period of time. Therefore, discussions were commenced to renegotiate the settlement to deal with the fact that any settlement would be a long, drawn-out affair.

4. On September 13, 1991, the parties entered into a revised settlement agreement (see Ex. 1 hereto). This agreement provided for a payment of \$75,000.00 for KKIK(FM). The AM station was no longer to be purchased. In addition, SEMFOT agreed

to dismiss its application for a new FM broadcast station at Midland, TX which was mutually exclusive with Elam's renewal application for KNFM-FM, Midland, TX (para. 5). The agreement to dismiss the Midland application was made at the insistence of Elam who demanded that the SEMFOT application be dismissed independently of whether the SEMFOT Lubbock application was approved. Elam was willing to put up with a delay in obtaining an approval on Lubbock in return for resolving the Midland matter (Midland being the most profitable station in the chain). Recognizing that there would be a delay in the final approval of the Lubbock portion of the deal, SEMFOT was granted permission to rebroadcast the signal of sister station KAMY over KIKI-FM until closing on the transaction (para. 6).

5. On October 3, 1991, the parties filed their SUPPLEMENT TO JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT, seeking approval of the revised agreement (Ex. 1 hereto). On January 3, 1992, the Commission acted on the joint request to dismiss SEMFOT's Midland application (Ex. 2 hereto). This action became final on February 12, 1992. Before the ink was dry on the dismissal of the Midland application, Elam informed SEMFOT that it must obtain approval of its application by March 31, 1992, or he was going to pull the plug on the agreement (Ex. 3 hereto). On or about March 25, 1992, Mr. Atkins of SEMFOT was advised orally by Mr. Elam that if SEMFOT came up with the \$75,000.00 called for in the contract by March 31, he would permit KAMY to continue to rebroadcast over KIKI.

6. Mr. Atkins went on the air on approximately March 26, 1992 and advised the listeners that unless the \$75,000.00 was

raised by March 31, 1992, the broadcasts over KKIK would have to cease. Since KAMY was operating at very low power (approx. 200 watts), this would have been tantamount to a loss of service for most of the citizens of the Lubbock listening area. It would take a miracle for this amount of money to be raised in the time required by Elam. KAMY had never raised this amount of money in its entire existence. The money needed would amount to several years donations to KAMY based on past giving levels. However, the citizens of Lubbock responded, the money was raised several hours prior to the deadline, the money was placed in escrow, and Mr. Elam was notified.

7. It is important to note here that the money to purchase KKIK came from the citizens of Lubbock. This was to be their radio station. In recognition of this fact, Mr. Atkins has agreed to step aside (petition for leave to amend filed November 11, 1992) to let others represent the citizens of Lubbock. Mr. Don Workman has agreed to take over this project. He was the high bidder for the station at the most recent bankruptcy auction held in connection with the station but was mysteriously not awarded the contract by Elam. Mr. Workman has previously owned radio stations in Lubbock and is thus fully qualified to operate this station in the public interest.

8. Notwithstanding the overwhelming response of the citizens of Lubbock to purchase this radio station for themselves, Mr. Elam pulled the plug on the rebroadcast of KAMY and proceeded to rescind the contract (this action is the subject of an appeal currently being prosecuted in the United States District Court for the Western District of Texas, Midland-Odessa Division, Civil

Action No. MO-92-CA-125).

9. In Mr. Elam's letter (Ex. 3), notifying of his intent to cancel the deal, he acknowledged SEMFOT's right under the settlement agreement to assign KKIK-FM to another party, stating "In the event that you choose pursuant to Paragraph 4 of the letter agreement to assign your right to purchase KKIK-FM to a buyer who has the requisite qualifications for a grant within the FCC's normal 60-day processing period for applications for assignment of license, I will negotiate an agreement with such buyer and file an assignment of license application with such buyer upon your immediate withdrawal of your pending renewal application."

10. The specific wording of para. 4 of the settlement agreement (see Ex. 1) is as follows: "In the event you are unable to obtain a grant of your construction permit within a reasonable period of time, you or your assigns may purchase KKIK-FM for the same amount and in accordance with the same terms as otherwise provided for here in." There was nothing to negotiate. It was simply a matter of informing the trustee that such election was being made (which was subsequently done). However, the trustee never proceeded to honor this provision of the agreement.

11. Instead, Elam filed a MOTION OF TRUSTEE FOR APPROVAL OF TERMINATION OF LETTER AGREEMENT WITH SOUTHWEST EDUCATIONAL MEDIA FOUNDATION OF TEXAS, INC. (Ex. 4 hereto). In this pleading, Elam misrepresented the facts to the Judge, stating "At the time such Letter Agreement was entered, it was contemplated that SEMF would receive approval of such construction permit, entitling it to become licensed by the FCC to operate on the frequency of KKIK-FM, in approximately 60 days." The whole reason for renego-

tiating the settlement was the fact that extended delays were expected due to the opposition filed by Williams. The parties knew that the application could not be granted within 60 days, and that is why SEMFOT agreed to dismiss the Midland application in return for rebroadcast consent over KIKI while the matter was being processed.

12. Additionally, the Trustee represented to the Bankruptcy Judge that he had proceeded with the filing of an assignment application but that FCC approval had not been obtained (see Ex. 5). In fact, the only thing that had been filed was the Joint Request for Approval of Settlement Agreement and the Supplement thereto. Under the agreement the Trustee had an obligation to assign the KIKI license to SEMFOT or its assigns if approval of the SEMFOT construction permit application was not granted within a reasonable period of time. By stating that this had been attempted, the Trustee gave the Court the false impression that he had lived up to the terms of the agreement when he clearly had not. At a hearing on a motion for rehearing, the Trustee's attorney admitted that the pleading filed with the Bankruptcy Judge was incorrect. However, Mr. Elam was unable to even comment on the matter. (Ex. 6 hereto).

13. Elam's bankruptcy counsel proceeded to argue that the misstatement contained in the pleadings did not matter because in either event it was expected that the matter would be closed within 60 days. (Ex. 7 hereto). This was also a misleading statement. The parties renegotiated the original contract because they knew it could not be concluded within 60 days due to the Williams' Petition to Deny (which coincidentally has been

withdrawn pursuant to a settlement agreement between Williams and Atkins). The issue was not whether the contract could be concluded within 60 days but whether it could be concluded with a "reasonable period of time" given the circumstance that a Petition to Deny had been filed. But even if the SEMFOT application could not be granted "within a reasonable period of time," SEMFOT had the right to cause Elam to file an assignment application, assigning the station to SEMFOT or its "assigns," meaning a third party whose qualifications were not in question. This contemplated an action in more than a "reasonable period of time," since a "reasonable period of time" was to elapse before this provision kicked in. Clearly, Elam has engaged in a pattern of misrepresentation before the Bankruptcy Court in an effort to obtain a rescission of the settlement agreement.

14. More significantly, however, is the pattern of misrepresentation and abuse of the Commission's processes which is evident from the actions of the Trustee. It is apparent that Mr. Elam never intended to live up to his agreement with SEMFOT. The sole purpose of entering into the settlement agreement was to induce SEMFOT to dismiss its application for Midland. Once this was done, the Trustee immediately took steps to renege on his agreement with SEMFOT. The Joint Request submitted by Elam was a fraud perpetrated on the Commission by a Trustee who had no intention of going through with the contract he filed with the Commission.

15. This would not be so bad if only the private interests of the parties were involved. Certainly, the Trustee has accused SEMFOT of taking advantage of the bankruptcy proceedings by

filing a competing application against the KKIK renewal. Turn-about is "fair play" one might argue. And this might be so if what we were dealing with here was a widget factory. However, this is not a widget factory. It is a broadcast station which is to be licensed to a public trustee to operate in the public interest. Not only is this an issue of selecting a "trustee" who will operate in the public interest, it is a case where the public has put up its money to acquire the station from the bankrupt estate as discussed above. (Indeed, in raising the funds for the buyout, over 1,000 citizens personally drove to the KAMY studio to deposit their hard-earned funds to see their radio station continue on the air).

16. Recognizing that this station should be dedicated to the citizens of Lubbock for their "public interest," Mr. Atkins has agreed to step down from his involvement in the station in favor of someone who is an experienced broadcaster who formerly owned a station in the market. It is not Mr. Atkins' private interests which are at stake here. It is the public's interests which are at stake. Mr. Atkins is more than willing to pass the torch to another. The issue here is whether the "public interest" is to be served. Mr. Elam would do well if he would likewise step down as Trustee so that the parties could proceed to a settlement which would serve the public interest and not the private interests of the respective applicants.

Elam Has Abused His Office as Trustee by Engaging
in Acts of Sexual Harassment and Racial Discrimination

17. Attached hereto as Ex. 8 is a letter dated June 18, 1992, from Ms. Susie Dobervich, former Office Manager of KLSF,

Amarillo, Tx. to Audra Bradshaw of the Office of the U.S. Trustee in San Antonio, TX with attached declaration verifying the truth of the statements contained therein. Ms. Dobervich complains that Mr. Elam has engaged in racial discrimination and sexual harassment in connection with his duties as licensee of the Bakcor radio stations. As indicated in Ex. 9 hereto, a letter dated July 10, 1992 from Audra Bradshaw to the undersigned, complaints have been received from two employees of the radio stations which Mr. Elam oversees, charging Mr. Elam with racial discrimination and sexual harassment.

18. Inasmuch as these charges were made in connection with Mr. Elam's duties as overseer of the Bakcor radio stations, they bear directly on Elam's qualifications to remain as a Commission licensee. The Commission imposes sanctions and/or designates renewal applications for hearing where the facts demonstrate a lack of adequate EEO efforts. *Amendment of Part 73 of the Commission's Rules Concerning Equal Employment Opportunity in the Broadcast Radio and Television Services*, 2 FCC Rcd 3967 (1987)(petition for reconsideration pending). The U.S. Court of Appeals, D. C. Circuit, has ruled that a renewal application must be designated for hearing when there is substantial evidence that an applicant has engaged in discrimination. *Beaumont Branch of the NAACP v. FCC*, 854 F. 2d 501, 506 (D.C. Cir. 1988). Based on the charges of discrimination which have been made in regard to Mr. Elam, the issues must be enlarged.

WHEREFORE THE PREMISES CONSIDERED, it is respectfully requested that the Presiding Judge enlarge the issues in this

proceeding to include the following additional issues:

To determine whether Elam engaged in a misrepresentation and/or abuse of the Commission's processes in submitting a proposed settlement of this proceeding which he never intended to honor, and if so, whether he is basically qualified to be a Commission licensee.

To determine whether Elam has engaged in racial discrimination and sexual harassment as licensee of various radio stations and, if so, whether he is basically qualified to be a Commission licensee.

Respectfully submitted,

Law Offices
JAMES L. OYSTER
Rt. 1, Box 203A
Castleton, VA 22716
(703) 937-4800

November 27, 1992

SOUTHWEST EDUCATIONAL MEDIA
FOUNDATION OF TEXAS, INC.

By 
James L. Oyster
Counsel

EXHIBIT 1

**COPY OF SUPPLEMENT TO JOINT REQUEST FOR APPROVAL OF SETTLEMENT
AGREEMENT**

RECEIVED

NOV 27 1992

Before the
FEDERAL COMMUNICATIONS COMMISSION

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Washington, D.C. 20554

In re Applications of)	
)	
SOUTHWEST EDUCATIONAL MEDIA)	
FOUNDATION OF TEXAS, INC.)	
)	
Midland, Texas, New FM Station)	File No. BPED-900629MM
Lubbock, Texas, New FM Station)	File No. BPED-900629MK
)	
For Construction Permit)	
)	
BAKCOR BROADCASTING, INC., DEBTOR)	
c/o DENNIS ELAM, Trustee)	
)	
KNFM(FM), Midland, Texas)	File No. BRH-900330WF
KKIK(FM), Lubbock, Texas)	File No. BRH-900330VV
)	
For Renewal of License)	

To: Chief, Mass Media Bureau

SUPPLEMENT TO JOINT REQUEST FOR
APPROVAL OF SETTLEMENT AGREEMENT

Southwest Educational Media Foundation of Texas, Inc. ("Semfot"), and Bakcor Broadcasting, Inc., Debtor, c/o Dennis Elam, Trustee ("Elam") (hereinafter referred to collectively as "Applicants"), hereby submit this supplement to their Joint Request for Approval of Settlement Agreement filed July 12, 1991 ("Joint Request"). In support whereof, the following is stated:

1. On July 12, 1991, Elam and Semfot filed a settlement agreement providing for dismissal of the Elam application for renewal of the license for KKI(FM), Lubbock, Texas, in return for payment to Elam of \$250,000. The payment was also to be in consideration for an acquisition by Semfot of a renewed license for Station KXTQ(AM), Lubbock, Texas. Since Semfot had not filed a renewal challenge against KXTQ(AM), that acquisition was to be the subject of an assignment of license application to be filed by Semfot and Elam. The Joint Request provided justification for approval of the settlement.

2. Since the filing of the Joint Request, Semfot has decided not to proceed with the purchase of KXTQ(AM). Instead, Semfot and Elam wish to proceed jointly only with respect to Station KKI(FM). As the attached letter agreement provides, Elam would dismiss the renewal application for KKI(FM) in return for a payment of \$75,000. Semfot would receive a grant of its construction permit application for the frequency currently occupied by Station KKI(FM) and would acquire all of the physical assets associated with the station.

3. In sum, the applicants continue to request dismissal of the KKI(FM) renewal application and a grant of Semfot's competing construction permit application, effective upon satisfaction of the payment specified in ¶2 of this Supplement.

Semfot also requests immediate dismissal of its application for a new FM broadcast station at Midland, Texas (File No. BPED-900629MM). Elam requests a grant of the license renewal application for KXTQ(AM), Lubbock, Texas, which is not the subject of any competing applications or petitions to deny. Elam also requests that the Commission resume processing of the license renewal application for KNFM(FM), Midland, Texas, in light of the dismissal of Semfot's Midland renewal challenge application.

4. As indicated in the Joint Request, Elam and Semfot request that the dismissal of Elam's renewal application for KKI(K)(FM) and the grant of Semfot's Lubbock FM construction permit application be made effective upon notification to the Commission that the consummation of the Lubbock FM settlement has been consummated. This procedure is consistent with Commission actions in other recent settlement proceedings among renewal applicants and competing applications. See, e.g., RKO General, Inc. (WGMS), 3 FCC Rcd 5262, 5264 (n. 4) (1988).

WHEREFORE the premises considered, it is respectfully requested that the Joint Request filed July 12, 1991, as supplemented herein, be GRANTED, and the attached letter agreement be APPROVED.

Respectfully submitted,

SOUTHWEST EDUCATIONAL MEDIA
FOUNDATION, INC.

By: James L. Oyster (u)
James L. Oyster

LAW OFFICES
JAMES L. OYSTER
Route 1, Box 203A
Castleton, VA 22716
(703) 937-4800

Its Counsel

BAKCOR BROADCASTING, INC., DEBTOR
c/o DENNIS ELAM, TRUSTEE

By: Lawrence Roberts
Lawrence Roberts
Linda J. Eckard

MULLIN, RHYNE, EMMONS AND TOPEL, P.C.
1000 Connecticut Avenue, NW, Suite 500
Washington, D.C. 20036
(202) 659-4700

Its Counsel

October 3, 1991

**DENNIS LEE ELAM, CPA
CHAPTER 7 TRUSTEE
4526 EAST UNIVERSITY, SUITE 5F
ODESSA, TEXAS 79762
915/561-8349
FAX 915/368-4431**

September 13, 1991

**Southwest Educational Media
Foundation of Texas, Inc.
Attn: Mr. T. Kent Atkins, President
2921 Brown Trail, Suite 140
Bedford, Texas 76021**

**RE: Case No. 89-70218-RBK
Bakor Broadcasting, Inc., and
Case No. 89-79219-RBK
Bakke Communications, Inc.**

Dear Mr. Atkins:

This letter will constitute an offer by me as Chapter 7 Trustee in the above Bankruptcy estates to settle the FCC proceeding involving Lubbock radio station KKIK-FM and your mutually exclusive application for the KKIK-FM frequency. It is understood that you have decided not to proceed with the purchase of KXTQ-AM. As Trustee I will sell all of the physical assets of KKIK-FM to you on the following terms and conditions:

- 1. The purchase price is the sum of \$75,000 in cash, with \$12,500 thereof to be paid as an escrow deposit by cashiers check or wire transfer to the Trustee or to Texas Bank, Odessa Texas ("Escrow Agent"), on or before September 16, 1991, and the remainder to be paid in cash at closing.**
- 2. The sale will include all physical assets of KKIK-FM in Lubbock, Texas. Except as provided below, the sale will not include any receivables or cash on hand, and all payables will also remain with the Bankruptcy estate, and be dealt with as claims against the estate.**
- 3. The sale will be free from all liens. You and I agree to work together to obtain approval of the sale by the Bankruptcy Court and any other necessary parties. Upon receipt of a copy of this Agreement executed by you, I will promptly file an Application for Approval of such sale with the Bankruptcy court under 11 U.S.C. Section 363 on an expedited basis. In this connection each party is to be responsible for his own costs and expenses.**
- 4. Upon receipt of such executed Agreement, I as Trustee will withdraw the application for renewal of KKIK-FM's license with the Federal Communications Commission, effective**

as of the date of your receipt of your new license. This will leave your competing application for license as the only one on file with the FCC. You will be responsible for pursuing such application. In the event you are unable to obtain a grant of your construction permit within a reasonable period of time, you or your assigns may purchase KKIK-FM for the same amount and in accordance with the same terms as otherwise provided for here in. Upon notification of your election to purchase KKIK-FM, I as Trustee will immediately make application for the transfer of KKIK-FM's license to you or your assigns with the Federal Communications Commission. I will faithfully prosecute this application for transfer with you until it's conclusion.

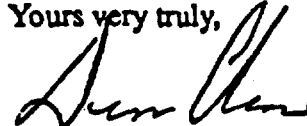
5. We will jointly move to dismiss all litigation between us in the Bankruptcy Court or elsewhere as of the date of closing. Upon the execution of this Agreement, you will withdraw all FCC filings seeking to deny Debtor's renewal application for radio station KNFM-FM, Midland, Texas, or seeking to obtain rights to operate a station on the frequency used by this station yourself.
6. As Chapter 7 Trustee, I will continue to operate the Lubbock station until the date of closing of the transaction. You agree to grant KKIK-FM rebroadcast consent, and I agree to rebroadcast KAMY-FM over KKIK-FM until the day of closing. You will be entitled to full access to all the books and records of the Lubbock station, together with the right to inspect the physical facilities, but you will not commence operations thereof and will not be entitled to any salary or other compensation from me as Chapter 7 Trustee or from these Debtors' estate. Since you have full rights of inspection and examination of the assets sold, no warranties or representations concerning the same will be made except the warranty or representation that such assets are being sold free and clear of liens.
7. It is understood that you presently broadcast programming on station KAMY-FM in Lubbock. You will be permitted to rebroadcast all programming now heard on KAMY-FM, on KKIK-FM until this sale is closed as provided below. You will be permitted to sell advertising time for the programs broadcast in this manner on KKIK-FM and retain all revenues therefrom. Under FCC Rules, as the person in control of KKIK-FM, I will be required to retain the right to substitute programs that are in the public interest for your programs. This right is to be exercised only to the extent necessary to meet FCC requirements. During this period, you will pay all costs of the tower lease for antenna space and site for transmitter equipment for KKIK-FM, provided that the amount of the lease payment and the term of the lease shall be accepted by you prior to the execution of any new lease with the lessor. I agree to use my best efforts to cause the expired lease to be reinstated in accordance with the original lease terms.
8. The sale will be closed on final approval by the FCC of your mutually exclusive application for the KKIK-FM facility. Closing shall be made in the offices of the Escrow Agent in Odessa, Texas. At such closing, you shall pay over to me as Trustee the balance of such Purchase Price in cash, and I shall deliver to you all assignments, bills of sale, and other documents evidencing transfer of assets of such station to you. We shall also exchange Releases of all claims and litigation. Upon such Closing, the Escrow Agent shall be discharged and released from its duties hereunder. The fees and charges of the Escrow Agent shall be paid 50% by you and 50% by me as Trustee. This Escrow Fee will

not exceed \$500.00.

9. In the event that, despite the best efforts of the parties, FCC approval of you as such licensee is finally denied, upon being furnished evidence of such final denial, the Escrow Agent shall pay over the initial deposit, plus any interest earned, to the Trustee, the balance of any monies held by it to you, and shall void all assignments and releases, provided that I, as the Chapter 7 Trustee, have complied with all of my obligations under this agreement, including, but not limited to my obligation to rebroadcast KAMY-FM.


This offer shall remain open and may be accepted in writing by your signature in the space provided below and delivery of a signed copy of this letter to the undersigned at the above address on or before 5:00 o'clock p.m. on September 16, 1991. Thank you for your assistance and cooperation.

Yours very truly,



Dennis Elam
Chapter 7 Trustee
(and not individually)

AGREED TO AND ACCEPTED AS FORMING
A BINDING CONTRACT THIS 16 DAY
OF SEPTEMBER, 1991.



T. Kent Atkins, President
Southwest Educational Media
Foundation of Texas, Inc.

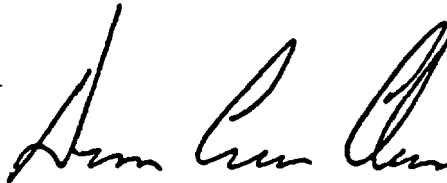
**AMENDMENT TO ASSET PURCHASE AGREEMENT
AND COMPROMISE AND SETTLEMENT AGREEMENT**

It is agreed between the parties to the above Agreement that the name and address of the Escrow Agent named in such Agreement is changed as follows:

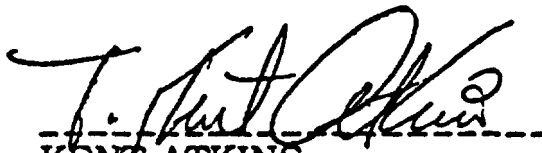
First City, Texas/Midland, N. A.
Trust Department
500 West Texas
Midland, TX 79701

All other provisions of said Agreement remain as originally written.

Dated: 9/14/91



DENNIS LEE ELAM
as Chapter 7 Trustee for
BAKCOR BROADCASTING, INC.
BAKKE COMMUNICATIONS, INC.



KENT ATKINS
SOUTHWEST EDUCATIONAL MEDIA
FOUNDATION OF TEXAS INC.

CERTIFICATE OF SERVICE

I, Veronica Abarre, a secretary in the law firm of Mullin, Rhyne, Emmons and Topel, P.C., hereby certify that on this 3rd day of October, 1991, a copy of the foregoing "Supplement To Joint Request For Approval Of Settlement Agreement" was sent by U.S. first-class mail, postage prepaid, to the following:

* James Shook, Esq.
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W.--Room 7212
Washington, D.C. 20554

James L. Oyster, Esq.
Law Offices of James L. Oyster
Route 1, Box 203A
Castleton, VA 22716
Counsel for Southwest Educational
Media Foundation of Texas, Inc.

John H. Midlen, Esq.
Midlen & Guillot, Chartered
3238 Prospect Street, N.W.
Washington, D.C. 20007-3214
Counsel for Williams Broadcasting Group


Veronica Abarre

* Hand Delivered

EXHIBIT 2

COPY OF COMMISSION LETTER DISMISSING MIDLAND APPLICATION

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

IN REPLY REFER TO:

January 3, 1992

T. Kent Atkins, President
Southwest Educational Media
Foundation of Texas, Inc.
2921 Brown Trail
Suite 140
Bedford, Texas 76021

In re: New (FM), Midland,
Texas (File No. BPED-
900629MM)

Dear Mr. Atkins:

This refers to the above-captioned application for a new noncommercial educational broadcast station for Midland, Texas on Channel 222C. The application is mutually exclusive with the renewal application for Station KNFM(FM), Midland, Texas.

On October 3, 1991, Southwest Educational Media Foundation of Texas, Inc. ("SEMFOT") and Bakcor Broadcasting, Inc., Debtor c/o Dennis Elam, Trustee ("Bakcor/Elam") filed a supplement to their joint request for approval of settlement agreement. Paragraph 3 of the supplement stated that SEMFOT "requests immediate dismissal of its application for a new FM broadcast station at Midland, Texas (File No. BPED-900629MM)." Review of the remainder of the supplement to the joint request reflects that the dismissal of SEMFOT's Midland application is not contingent on grant of the joint request. Further, there is no indication that dismissal of SEMFOT's Midland application is pursuant to a promise of payment or any other type of consideration. In addition, in the joint request filed by SEMFOT and Bakcor/Elam on July 12, 1991, SEMFOT certified that its application for Midland had not been filed for the purpose of reaching a settlement. Thus, the parties have complied with Section 73.3523 of the Commission's Rules with respect to SEMFOT's Midland application.